

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Henry Esquivel et al., } CASE NO. 2:11-cv-07284-JHN -PJWx
Plaintiff(s), } **ORDER RE JURY TRIAL**
v. } **I. ORDER RE DEADLINES:**
Performance Food Group Inc et al., } (SEE PAGE TWO)
Defendant(s). } **II. ORDER RE TRIAL**
} **PREPARATION**
} **III. ORDER GOVERNING**
} **CONDUCT OF ATTORNEYS**
} **AND PARTIES**

1 **I. DEADLINES**
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3 A. Adding Parties or Amending Pleadings: June 12, 2012;

4 **Deadline for Filing Class Certification Motion:**

5 **March 19, 2012**

6 **Opposition due April 2, 2012**

7 **Reply, if any, due April 9, 2012**

8 **Hearing: April 30, 2012 at 2:00 p.m.**

9 B. Discovery Cut-off: August 21, 2012;

10 C. Expert Witness Exchange Deadline:

11 Initial: August 21, 2012;

12 Rebuttal: September 18, 2012;

13 Cut-off: October 16, 2012;

14 D. Motion Hearing Cut-off: October 29, 2012;

15 E. Settlement Conference Cut-off: November 13, 2012;

16 F. Final Pretrial Conference (and

17 hearing on Motions in Limine): December 17, 2012 at 10:30 a.m.;

18 G. Trial Date: January 22, 2013 at 8:30 a.m.

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3 A. PARTIES/PLEADINGS

4 The Court has established a cut-off date for adding parties or amending
5 pleadings. All motions to add parties or to amend the pleadings must be noticed
6 to be heard on or before the cut-off date. All unserved parties will be dismissed at
7 the time of the pretrial conference pursuant to Local Rule 16-8.1.

8 B. DISCOVERY AND DISCOVERY CUT-OFF

9 1. Discovery Cut-off: The Court has established a cut-off date for
10 discovery, including expert discovery, if applicable. This is not the date by which
11 discovery requests must be served; it is the date by which all discovery, including
12 all hearings on any related motions, is to be completed.

13 2. Discovery Disputes: Counsel are expected to comply with all Local
14 Rules and the Federal Rules of Civil Procedure concerning discovery. Whenever
15 possible, the Court expects counsel to resolve discovery problems among
16 themselves in a courteous, reasonable, and professional manner. The Court
17 expects that counsel will adhere strictly to the Civility and Professionalism
18 Guidelines (which can be found on the Court's website under "Attorney
19 Information> Attorney Admissions").

20 3. Discovery Motions: Any motion challenging the adequacy of discovery
21 responses must be filed, served, and calendared sufficiently in advance of the
22 discovery cut-off date to permit the responses to be obtained before that date, if
23 the motion is granted.

24 4. Depositions: All depositions shall commence sufficiently in advance of
25 the discovery cut-off date to permit their completion and to permit the deposing
26 party enough time to bring any discovery motions concerning the deposition
27 before the cut-off date. Given the requirements to "meet and confer," and notice
28 requirements, in most cases a planned motion to compel must be discussed with

1 opposing counsel at least six weeks before the cut-off.

2 5. Written Discovery: All interrogatories, requests for production of
3 documents, and requests for admissions must be served sufficiently in advance of
4 the discovery cut-off date to permit the discovering party enough time to
5 challenge (via motion practice) responses deemed to be deficient.

6 C. Expert Discovery: All disclosures must be made in writing. The parties
7 should begin expert discovery shortly after the initial designation of experts. The
8 final pretrial conference and trial dates will not be continued merely because
9 expert discovery is not completed. Failure to comply with these or any other
10 orders concerning expert discovery may result in the expert being excluded as a
11 witness.

12 D. LAW AND MOTION

13 The Court has established a cut-off date for the hearing of motions. All
14 motions must be noticed so that the hearing takes place on or before the motion
15 cut-off date. Counsel must provide Chambers with conformed Chambers copies
16 of all documents. Chambers copies should not be put in envelopes. Counsel
17 should consult the Court's website at www.cacd.uscourts.gov>Judges' Procedures
18 and Schedules>Hon. Jacqueline H. Nguyen for further information regarding
19 motion procedures.

20 E. SETTLEMENT PROCEDURES

21 A settlement procedure must be identified in every case pursuant to Local
22 Rule 16-15, et seq. Counsel must complete a settlement conference no later than
23 the date set by the Court at the scheduling conference. Not to the exclusion of
24 other procedures, the following are available:

- 25 (1) a settlement conference before the magistrate
26 judge assigned to the case;
27 (2) a settlement conference or mediation before
28 an attorney selected from the Attorney
Settlement Panel;

(3) the employment (at the parties' expense) of a private judge, mediator, or arbitrator.

If a case is selected for the Mandatory ADR Program, the parties may choose option (3) instead, but may not choose option (1). Judge Nguyen will hold a settlement conference at the request of the parties in jury trial cases with a trial estimate of more than four days.

No case will proceed to trial unless all parties, including the principals of all corporate parties, have appeared personally at a settlement conference.

E. FINAL PRETRIAL CONFERENCE

1. A final pretrial conference date has been set pursuant to Rule 16 of the Federal Rules of Civil Procedure and Local Rule 16-8. Unless excused for good cause, each party appearing in this action shall be represented at the final pretrial conference by the attorney who is to have charge of the conduct of the trial on behalf of such party. Counsel should be prepared to discuss streamlining the trial, including presentation of testimony by deposition excerpts or summaries, time limits, stipulations as to undisputed facts, and qualification of experts by admitted resumes.

2. STRICT COMPLIANCE WITH LOCAL RULE 16 IS REQUIRED.

THIS ORDER SETS FORTH SOME DIFFERENT AND SOME ADDITIONAL REQUIREMENTS. THIS COURT DOES NOT EXEMPT *PRO PER* PARTIES FROM THE REQUIREMENTS OF RULE 16. Carefully prepared memoranda of contentions of fact and law, witness lists, a joint exhibit list, and a proposed final pretrial conference order shall be submitted in accordance with the Rules, and the format of the proposed final pretrial conference order shall conform to the format set forth in Appendix A to the Local Rules. Failure of these documents to comply with these requirements may result in the final pretrial conference being taken off-calendar or continued, or in other sanctions.

3. The memoranda of contentions of fact and law, witness lists, and the

1 joint exhibit list are due not later than 21 days before the final pretrial conference,
2 and the proposed final pretrial conference order is to be lodged not later than 11
3 days before the final pretrial conference.

4 4. In addition to the requirements of Local Rule 16, the witness lists must
5 include a brief (one or two paragraph) description of the testimony, and a time
6 estimate for both direct and cross-examination (separately stated). See attached
7 samples.

8 5. Other documents to be filed in preparation for, and issues to be
9 addressed at, the final pretrial conference are discussed below.

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ADDITIONAL TRIAL PREPARATION

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A. MOTIONS IN LIMINE

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All motions *in limine* must be filed at least three weeks before the final pretrial conference. Counsel are to meet and confer with opposing counsel to determine whether opposing counsel intends to introduce the disputed evidence, and to attempt to reach an agreement that would obviate the motion. Opposition must be filed two weeks before the final pretrial conference. The Court will rule on motions *in limine* at the final pretrial conference. Motions *in limine* should address specific issues (i.e., *not* "to exclude all hearsay," etc.). Motions *in limine* should not be disguised motions for summary adjudication of issues.

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B. JURY INSTRUCTIONS, SPECIAL VERDICT FORMS, VOIR DIRE, JURY SELECTION

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1. Fourteen days before the meeting of counsel required by Local Rule 16-2, plaintiff shall serve plaintiff's proposed jury instructions and special verdict forms, and defendant shall serve defendant's proposed jury instructions and special verdict forms as to any affirmative defenses, counterclaims, etc. Within

1 ten days each shall serve objections to the other's instructions and verdict forms.
2 Before or at the Rule 16-2 meeting, counsel are ordered to meet and confer and
3 attempt to come to agreement on the proposed jury instructions and verdict forms.

4 2. When the Manual of Model Jury Instructions for the Ninth Circuit
5 provides an applicable jury instruction, the parties should submit the most recent
6 version, modified and supplemented to fit the circumstances of this case. Where
7 language appears in brackets, the appropriate language should be selected. All
8 blanks should be completed. Where California law applies, counsel should use
9 the current edition of California Jury Instructions -- Civil ("BAJI" or "CACI"). If
10 neither is applicable, counsel should consult the current edition of O'Malley, et
11 al., Federal Jury Practice and Instructions. Each requested instruction shall (a)
12 cite the authority or source of the instruction, (b) be set forth in full, (c) be on a
13 separate page, (d) be numbered, (e) cover only one subject or principle of law, and
14 (f) not repeat principles of law contained in any other requested instruction.

15 Counsel may submit alternatives to these instructions only if counsel has a
16 reasoned argument that they do not properly state the law or they are incomplete.

17 3. At the time of filing the proposed final pretrial conference order, counsel
18 shall file with the Court a JOINT set of jury instructions on which there is
19 agreement. All blanks in standard forms should be filled in. The Court expects
20 counsel to agree on the substantial majority of jury instructions, particularly when
21 pattern or model instructions provide a statement of applicable law. If one party
22 fails to comply with the provisions of this section, the other party must file a
23 unilateral set of jury instructions, unless that party wishes to waive jury trial.

24 4. At the same time, each party shall file its proposed jury instructions that
25 are objected to by any other party. Each disputed instruction must have attached a
26 short (one or two paragraph) statement, including points and authorities in support
27 of the instruction as well as a brief statement, including points and authorities, in
28 support of any objections. A proposed alternative instruction must be provided, if

1 applicable. If the Court believes that there are so many disputed instructions that
 2 the trial would be unnecessarily interrupted in order for the Court to resolve
 3 disputes, the Court may determine that the matter is not yet ready to be tried, and
 4 may order counsel to continue to meet and confer until most of the disputes are
 5 resolved.

6 5. Counsel must provide the documents described in paragraphs 3 and 4 on
 7 a disk in WordPerfect 9 (or above) format at the time they file their proposed jury
 8 instructions.

9 6. The Court will send one or more copies of the instructions into the jury
 10 room for the jury's use during deliberations. Therefore, in addition to the copies
 11 described above, the disk must contain a "clean" set of jury instructions,
 12 containing only the text of the instruction (one per page) with the caption
 13 "Instruction No. __" at the top (eliminating titles, supporting authority, etc.).

14 7. Counsel must provide an index of all instructions submitted, which must
 15 include the following:

- 16 a. The number of the instruction;
- 17 b. The title of the instruction;
- 18 c. the source of the instruction and any relevant case citations;
- 19 d. The page number of the instruction.

20 For example:

<u>Number</u>	<u>Title</u>	<u>Source</u>	<u>Page</u>
1	Trademark - Defined (15 U.S.C. § 1127)	9th Cir. 15.3.2	7

24 8. During the trial and before argument, the Court will meet with counsel
 25 and settle the instructions, and counsel will have an opportunity to make a further
 26 record concerning their objections.

27 9. At the time of filing the proposed final pretrial conference order, counsel
 28 should file a jointly prepared one or two page statement of the case to be read by

1 the Court to the prospective panel of jurors before commencement of voir dire.

2 10. The Court will conduct the voir dire. The Court provides a list of basic
3 questions, and may provide a list of additional questions to jurors before voir dire.
4 (This is not a questionnaire to be completed by jurors.) Counsel may, but are not
5 required to, submit a list of proposed case-specific voir dire questions at the time
6 they file the proposed final pretrial conference order.

7 11. The Court will inquire concerning whether serving on the jury would
8 create a substantial hardship, and may excuse jurors for that reason, before
9 beginning individual voir dire.

10 12. In most cases the Court will conduct its initial voir dire of 14
11 prospective jurors who will be seated in the jury box. Generally the Court will
12 select seven or eight jurors.

13 13. Each side will have three peremptory challenges. If fourteen jurors are
14 seated in the box and all six peremptories are exercised, the remaining eight jurors
15 will constitute the jury panel. If fewer than six peremptories are exercised, the
16 eight jurors in the lowest numbered seats will be the jury. The Court will not
17 necessarily accept a stipulation to a challenge for cause. If one or more challenges
18 for cause are accepted, and all six peremptories are exercised, the Court may
19 decide to proceed with six or seven jurors.

20 C. TRIAL EXHIBITS

21 1. Counsel are to prepare their exhibits for presentation at the trial by
22 placing them in binders indexed by exhibit number with tabs or dividers on the
23 right side. Counsel shall submit to the Court an original and one copy of the
24 binders. The exhibits shall be in three-ring binders labeled on the spine portion of
25 the binder as to the volume number and contain an index of each exhibit included
26 in the volume. Exhibits must be numbered in accordance with Local Rule 16-6.

27 2. The Court requires that the following be submitted to the Courtroom
28 Deputy Clerk (“CRD”) on the first day of trial:

- 1 a. The binder of original exhibits with the Court's exhibit tags,
2 yellow tags for plaintiff and blue tags for defendant, stapled to the front of the
3 exhibit on the upper right-hand corner with the case number, case name, and
4 exhibit number placed on each tag.
 - 5 b. One binder with a copy of each exhibit tabbed with numbers as
6 described above for use by the Court. (Exhibit tags are not necessary on these
7 copies.)
 - 8 c. Three copies of exhibit lists.
 - 9 d. Three copies of witness lists in the order in which the witnesses
10 may be called to testify.
- 11 3. Where a significant number of exhibits will be admitted, the Court
12 encourages counsel, preferably by agreement, to consider ways in which
13 testimony about exhibits may be made intelligible to the jury while it is being
14 presented. Counsel may consider such devices as overhead projectors, jury
15 notebooks for admitted exhibits, or enlargements of important exhibits. The Court
16 has an Elmo and other equipment available for use during trial. Call the CRD if
17 you wish to visit when the Court is not in session to practice using the equipment.
18 The Court does not permit exhibits to be "published" by passing them up and
19 down the jury box. Exhibits may be displayed using the screen in the courtroom,
20 only if the process does not become too time-consuming.
- 21 4. All counsel are to meet not later than ten days before trial and to
22 stipulate, so far as is possible, to foundation, to waiver of the best evidence rule,
23 and to those exhibits that may be received into evidence at the start of the trial.
24 The exhibits to be so received will be noted on the extra copies of the exhibit lists.

25 D. JURY TRIAL

26 On the first day of trial, court will commence at 9:00 a.m. and conclude at
27 approximately 4:00 p.m. with the standard lunch break. On the first day of trial
28 counsel must appear at 8:30 a.m. to discuss preliminary matters with the Court.

1 The jury panel will be called when the Court is satisfied that the matter is ready
2 for trial. Jury selection usually takes only a few hours. Counsel should be
3 prepared to proceed with opening statements and witness examination
4 immediately after jury selection. After the first day of trial, trial days are Tuesday
5 through Friday from 9:00 a.m. to approximately 3:00 p.m. with two fifteen-minute
6 breaks and a one-hour lunch break.

7 E. COURT REPORTER

8 Any party requesting special court reporter services for any hearing (i.e.
9 real time transmission, daily transcripts) shall notify the reporter at least 2 weeks
10 before the hearing date.

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III

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CONDUCT OF ATTORNEYS AND PARTIES

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A. OPENING STATEMENTS, EXAMINING WITNESSES, AND
SUMMATION

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1. Counsel must use the lectern for opening statements, examination of
witnesses, and summation.
2. Counsel must not consume time by writing out words, drawing charts or
diagrams, etc. Counsel may do so in advance and explain that the item was
prepared earlier as ordered by the Court to save time.

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3. The Court will honor (and may establish) reasonable time estimates for

opening and closing arguments, examination of witnesses, etc.

B. OBJECTIONS TO QUESTIONS

1. Counsel must not use objections for the purpose of making a speech,
recapitulating testimony, or attempting to guide the witness.

2. When objecting, counsel must rise to state the objection and state only
that counsel objects and the legal ground of objection. If counsel wishes to argue

1 an objection further, counsel must ask for permission to do so.

2 C. GENERAL DECORUM

3 1. Counsel should not approach the CRD or the witness box without
4 specific permission. If permission is given, counsel should return to the lectern
5 when the purpose has been accomplished. Counsel should not question a witness
6 at the witness stand.

7 2. Counsel should rise when addressing the Court, and when the Court or
8 the jury enters or leaves the courtroom.

9 3. Counsel should address all remarks to the Court. Counsel are not to
10 address the CRD, the court reporter, persons in the audience, or opposing counsel.
11 If counsel wish to speak with opposing counsel, counsel must ask permission to
12 do so. Any request for the re-reading of questions or answers shall be addressed
13 to the Court. Such requests should be limited. Requests may not be granted.

14 4. Counsel should not address or refer to witnesses or parties by first names
15 alone. Young witnesses (under 14) may, however, be addressed and referred to by
16 first names.

17 5. Counsel must not offer a stipulation unless counsel has conferred with
18 opposing counsel and has verified that the stipulation will be acceptable.

19 6. While Court is in session, counsel must not leave counsel table to confer
20 with any personnel or witnesses in the back of the courtroom unless permission
21 has been granted in advance.

22 7. Counsel should not by facial expression, nodding, or other conduct
23 exhibit any opinion, adverse or favorable, concerning any testimony being given
24 by a witness. Counsel should admonish counsel's own clients and witnesses to
25 avoid such conduct.

26 8. Counsel should not talk to jurors at all, and should not talk to co-
27 counsel, opposing counsel, witnesses or clients where the conversation can be
28 overheard by jurors. Each counsel should admonish counsel's own clients and

1 witnesses to avoid such conduct.

2 9. Where a party has more than one lawyer, only one may conduct the
3 direct or cross-examination of a particular witness, or make objections as to that
4 witness.

5 D. PROMPTNESS OF COUNSEL AND WITNESSES

6 1. The Court makes every effort to begin proceedings at the time set.
7 Promptness is expected from counsel and witnesses. Once counsel are engaged in
8 trial, this trial is counsel's first priority. The Court will not delay the trial or
9 inconvenience jurors except under extraordinary circumstances. The Court will
10 advise other courts that counsel are engaged in trial in this Court on request.

11 2. If a witness was on the stand at a recess, counsel must have the witness
12 back on the stand, ready to proceed, when the court session resumes.

13 3. Counsel must notify the CRD in advance if any witness should be
14 accommodated based on a disability or for other reasons.

15 4. No presenting party may be without witnesses. If counsel has no more
16 witnesses to call and there is more than a brief delay, the Court may deem that
17 party to have rested.

18 5. The Court attempts to cooperate with professional witnesses and will,
19 except in extraordinary circumstances, accommodate them by permitting them to
20 be called out of sequence. Counsel must anticipate any such possibility and
21 discuss it with opposing counsel. If there is an objection, counsel must confer
22 with the Court in advance.

23 E. EXHIBITS

24 1. Each counsel should keep counsel's own list of exhibits and should note
25 when each has been admitted into evidence.

26 2. Each counsel is responsible for any exhibits that counsel secures from
27 the CRD and must return them before leaving the courtroom at the end of the
28 session.

1 3. An exhibit not previously marked should, at the time of its first mention,
2 be accompanied by a request that the CRD mark it for identification. To save
3 time, counsel must show a new exhibit to opposing counsel before it is mentioned
4 in Court.

5 4. Counsel are to advise the CRD of any agreements they have with respect
6 to the proposed exhibits and as to those exhibits that may be received so that no
7 further motion to admit need be made.

8 5. When referring to an exhibit, counsel should refer to its exhibit number
9 whenever possible. Witnesses should be asked to do the same.

10 6. Counsel must not ask witnesses to draw charts or diagrams nor ask the
11 Court's permission for a witness to do so. If counsel wishes to question a witness
12 in connection with graphic aids, the material must be fully prepared before the
13 court session starts.

14 F. DEPOSITIONS

15 1. All depositions to be used at trial, either as evidence or for impeachment,
16 must be lodged with the CRD on the first day of trial or such earlier date as the
17 Court may order. Counsel should verify with the CRD that the relevant deposition
18 is in the CRD's possession.

19 2. In using depositions of an adverse party for impeachment, either one of
20 the following procedures may be adopted:

21 (a) If counsel wishes to read the questions and answers as alleged
22 impeachment and ask the witness no further questions on that subject, counsel
23 shall first state the page and line where the reading begins and the page and line
24 where the reading ends, and allow time for any objection. Counsel may then read
25 the portions of the deposition into the record.

26 (b) If counsel wishes to ask the witness further questions on the
27 subject matter, the deposition is placed in front of the witness and the witness is
28 told to read silently the pages and lines involved. Then counsel may either ask the

1 witness further questions on the matter and thereafter read the quotations, or read
2 the quotations and thereafter ask further questions. Counsel should have an extra
3 copy of the deposition for this purpose.

4 3. Where a witness is absent and the witness's testimony is offered by
5 deposition, counsel may (a) have a reader occupy the witness chair and read the
6 testimony of the witness while the examining lawyer asks the questions, or (b)
7 have counsel read both the questions and answers.

8 G. USING NUMEROUS ANSWERS TO INTERROGATORIES AND
9 REQUESTS FOR ADMISSIONS

10 Whenever counsel expects to offer a group of answers to interrogatories or
11 requests for admissions extracted from one or more lengthy documents, counsel
12 should prepare a new document listing each question and answer, and identifying
13 the document from which it has been extracted. Copies of this new document
14 should be given to the Court and opposing counsel. This procedure is intended to
15 save time.

16 H. ADVANCE NOTICE OF UNUSUAL OR DIFFICULT ISSUES

17 If any counsel has reason to anticipate that a difficult question of law or
18 evidence will necessitate legal argument requiring research or briefing, counsel
19 must give the Court advance notice. Counsel are directed to notify the CRD at the
20 day's adjournment if an unexpected legal issue arises that could not have been
21 foreseen and addressed by a motion *in limine*. See Fed. R. Evid. 103. Counsel
22 must also advise the CRD at the end of each trial day of any issues that must be
23 addressed outside the presence of the jury, so that there is no interruption of the
24 trial. THE COURT WILL NOT KEEP JURORS WAITING.

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26 IT IS SO ORDERED.
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28 DATED: November 17, 2011



1 Jacqueline H. Nguyen
2 United States District Judge

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

WITNESSES FOR PLAINTIFF	DATES OF TESTIMONY
	<i>(to be filled in during trial)</i>
WITNESSES FOR DEFENDANT	

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

vs.

Plaintiff(s),

Defendant(s).

CASE NO. CV

EXHIBIT LIST

SAMPLE FORMAT

CASE: _____

TRIAL DATE: _____

	WITNESS NAME	PARTY CALLING WITNESS AND ESTIMATE	X-EXAMINER'S ESTIMATE	DESCRIPTION OF TESTIMONY	COMMENTS
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	TOTAL ESTIMATES THIS PAGE:				

Instructions:

(1) List witnesses (last name first); (2) For description, be extremely brief, e.g., "eyewitness to accident" or "expert on standard of care;" (3) Use estimates within fractions of an hour, rounded off to closest quarter of an hour, e.g., if you estimate 20 minutes, make it .25. An estimate of one and one-half hours would be 1.5. An estimate of three-quarters of an hour would be .75; (4) Note special factors in "Comments" column, e.g., "Needs interpreter;" (5) Entries may be in handwriting if very neat and legible.